IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1431 OF 2004

Shri Ibrahimkhan Allikhan Deshmukh ... Appellant

V/s

Shri Allikhan Mohamadkhan Deshmukh
& ors. ... Respondents

Mr. Vinod V. Savaji holding for Prafulla B. Shah for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 13TH JULY, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Raigad, dated 13.7.2004 dismissing the appeal of the appellant and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Mahad dated 31.12.1998 decreeing the plaintiffs' suit for possession from the defendants.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiffs filed the suit for recovery of the amount of Rs.25,000/- towards compensation from the defendants contending that they were maliciously prosecuted by defendants in Summary Cri. Case No. 817 of 1987 in the Court of Judicial Magistrate First Class, Mahad.

The defendants challenged the suit on various grounds inter-alia submitting that the criminal case filed by him was neither with an intention of ill-motive nor that malicious element but was based on the incident which allegedly took place.

The learned Trial Judge, after hearing both sides and on available evidence came to the consluion that the plaintiff proved that defendants had launched the prosecution against the plaintiffs without reasonable and probable cause and it was further held that said prosecution was acquitted with malice and accordingly the decree for damages came to be passed to the extent of Rs.7,000/- to plaintiff No.1 and Rs.3,700/- each to plaintiff Nos. 2 and 3 alongwith interest thereon.

The appeal was carried to the District Court. The learned Addl. District Judge, Raigad, after hearing

both parties came to the conclusion that the findings recorded by the lower Court were legal and proper and, therefore, the appeal came to be dismissed. Hence the present appeal.

4. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. It was alleged on behalf of the appellant that there is absolutely no evidence to show that the prosecution was launched with malicious intention. However, perusal of the judgments of both the Courts below shows that evidence on record was held sufficient to prove that the act of the defendants to prosecute plaintiffs was with ill motive and malice. It was also held that the circumstances proved on record were sufficient to indicate that defendant No.1 instituted prosecution in improper manner and with ill-motive and, therefore, inference had to be drawn that it was with malicious intention.

5. In view of these aspects, and on perusal of the record, I am satisfied that both the Courts below have appreciated the entire evidence on record in proper perspective and, therefore, the appeal has no merits.

In the result, the appeal stands dismissed with no order

as to costs. Consequently, the civil application No. 1886 of 2004 also stands dismissed with no order as to costs.

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